IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL
ORIGINAL JURISDICTION

Dated: Nainital the November 27th, 2006
Criminal Misc. Bail Application NO. 1116 of 2006
Order on the bail application of accused

CRIMINAL SIDE

Jawed Anwar
S/o Shri Noor Ilahi
R/o 178, Ballupur Road
P.S. Cantonment, Dehradun
District Dehradun .....Applicant

State of Uttranchal .....Opposite Party

Arising out of case crime No. 340/2006
Registered on the basis of FIR dated 30.09.2006
Under Sections 18/20 N.D.P.S. Act
P.S. Kotwali
District Dehradun

Hon'ble J.C.S. Rawat, J.

Heard Sri R.P. Nautiyal learned counsel for the applicant and learned A.G.A. for the State.

Perused the record. It is alleged in the FIR that the police party arrested the co-accused Prem Chand and Manoj in front of Classic Medical Agencies on 30.09.2006. The present applicant is the owner of the said medical Agency. The police party recovered some medicines whose possession and sale are prohibited under the N.D.P.S. Act. The aforesaid co-accused apprehended by the police party that they were the salesman of the present applicant and the drugs were being sold at the behest of the applicant-accused. When the police party tried to search the shop the applicant-accused, he fled away from the shop. Thereafter, the police party immediately sealed the shop of the applicant. Meanwhile, the applicant moved an application on 03.10.2006 for his surrender before the court and on 07.10.2006 the police submitted its report that the applicant-accused is wanted in the said offence. But, the applicant-accused did not appear on that day and the matter was postponed. In the meantime, the police obtained the search warrant for the search of the shop of the applicant

and a search was made in presence of two witnesses. Though, it is disputed that both witnesses did not belong to the same locality. Thereafter, a number of drugs, which are prohibited under the N.D.P.S. Act, were recovered from the shop of the applicant.

It was contended by the learned A.G.A. that the recovered drugs fall in the category of Schedule-I of the Narcotic Act {under Rule 53 & 64 framed under the N.D.P.S. Act}. It was pointed out by the learned counsel for the applicant that the drugs have been planted in the shop of the applicant. It was further pointed out that his family members or he was not called at the time of search of his shop. It was further contended that the search is fake and it cannot be relied upon. Perusal of the Rules 64 framed under the N.D.P.S. Act clearly provides that no person shall manufacture, possess, transport, sell, purchase, consume or use any of psychotropic substances specified in Schedule-I. It is not disputed that the drugs recovered from the shop of the applicant did not fall in the category of Schedule-1. Perusal of the recovery memo reveals that a considerable quantity of drugs had been recovered from the shop of the applicant. It was pointed out by the learned counsel for the applicant that the police had not taken search warrant for a period of 10 days from the date of incident and there is no explanation for delay in obtaining the search warrant. Learned AGA refuted the contention and contended that the police was making efforts to search the applicant. Perusal of the record shows that the police was investigating the matter and as such there was no delay in obtaining the search warrant.

Considering the facts and circumstances of the case, it is not a fit case for bail. Therefore, the bail application is hereby rejected.

Rejected.

J.C.S. Rawat, J.

Dated 27.11.2006
LSR